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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVON CAREY GRIFFITH,

Defendant and Appellant.

B236273

(Los Angeles County  
Super. Ct. No. BA363506)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Mitchell, Judge. Affirmed.

Davon Carey Griffith, in pro. per.; and Jasmine Patel, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Davon Carey Griffith appeals from the judgment entered following his conviction by a jury for first degree robbery and first degree burglary with related firearm-use findings. No meritorious issues have been identified by Griffith's appointed counsel or by our own independent review of the record and analysis of the challenges to the sufficiency of the evidence presented by Griffith in a handwritten supplemental brief. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Charges*

An amended information charged Griffith and David Sean Haliburton<sup>1</sup> with first degree robbery (Pen. Code, §§ 211 (a), 212.5, subd. (a), count 1),<sup>2</sup> assault with a deadly weapon (§ 245, subd. (a)(1), count 2), assault with a semiautomatic firearm (§ 245, subd. (b), count 3) and first degree burglary (§§ 459, 460, subd. (a), count 4). The information further alleged as to counts 1, 3 and 4 that Griffith and Haliburton had personally used a firearm (§§ 12022.53, subd. (b), 12202.5, subd. (a)), and a principal was armed with a firearm (§ 12022, subd. (a)(1)). In addition, it was specially alleged Griffith had suffered a prior serious or violent felony conviction for attempted robbery within the meaning of section 667, subdivision (a)(1), and the "Three Strikes" law (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)).

### *2. Summary of Trial Evidence*<sup>3</sup>

George Lopez, a convicted drug dealer, was the victim of a home invasion robbery and residential burglary. Lopez's preliminary hearing testimony was read to the jury at trial after he exercised his constitutional right not to testify because of pending drug charges against him.

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<sup>1</sup> David Sean Haliburton is not a party to this appeal.

<sup>2</sup> Statutory references are to the Penal Code.

<sup>3</sup> Griffith and Haliburton were tried jointly with separate juries.

According to Lopez's testimony, Griffith and Haliburton broke down the front door of Lopez's house, demanded money from him at gunpoint and threatened to kill him. At some point Griffith struck Lopez in the head with his gun. After removing \$1,000 in cash from Lopez's pockets as well as a watch and jewelry from some cabinets, Griffith and Haliburton left. They were immediately detained by police outside the house. Officers recovered the cash and jewelry from Griffith's pockets, but no weapon. Haliburton dropped a handgun as he was attempting to jump over a fence. Officers also found two pairs of sunglasses on Haliburton, which Lopez later said belonged to him. Lopez, who had blood on his face and head, identified Griffith and Haliburton as the men who had robbed him.

Griffith did not testify in his defense.

The primary issue at trial was credibility. The defense theory was that Lopez had threatened Griffith and Haliburton with the gun, and the two men had run from the house in fear for their lives. Defense counsel also argued there were inconsistencies in Lopez's preliminary hearing testimony and deficiencies in the People's evidence sufficient to create reasonable doubt.

### *3. Verdict and Sentencing*

The jury found Griffith guilty of first degree robbery and first degree burglary, but not guilty of assault with a semiautomatic firearm.<sup>4</sup> The jury found true the principal-armed firearm enhancements, but not true the personal-use enhancements. In a bifurcated proceeding Griffith admitted the prior strike and prior serious felony allegations.

Griffith was sentenced to an aggregate state prison term of 18 years, consisting of 12 years for first degree robbery (double the six-year upper term under the Three Strikes law), plus five years for the prior serious felony enhancement and one year for the firearm enhancement. The sentence on the first degree burglary count and related enhancement was stayed (§ 654). Griffith received presentence custody credit of

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<sup>4</sup> The trial court granted the People's motion to dismiss the charge of assault with a deadly weapon prior to the case being submitted to the jury.

462 days (402 actual days and 60 days of conduct credit). The trial court ordered Griffith to pay a \$40 security assessment and a \$30 criminal conviction assessment on each count and a \$200 restitution fine. The court imposed and suspended a parole revocation fine pursuant to section 1202.45.

## **DISCUSSION**

We appointed counsel to represent Griffith on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On April 24, 2012 we advised Griffith he had 30 days within which to personally submit any contentions or issues he wished us to consider. We received a handwritten supplemental brief in which Griffith challenged the sufficiency of the evidence to support his convictions. Although Griffith's claim presents no arguable issue, pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 120-121, we explain the reason it fails.

Griffith's argument focuses on the lack of police photographs of the allegedly stolen items to corroborate Lopez's preliminary hearing testimony. Griffith's counsel made the same point to the jury in argument, emphasizing as well the conflicting testimony of two police officers as to which items were found on which defendant. Griffith also asserts the evidence to support the jury's finding that he pistol-whipped Lopez was not supported by photographs of Lopez's injuries or his bloody clothing.

Lopez's preliminary hearing testimony, which the jury obviously believed, was sufficient to support the verdicts without corroborating physical evidence. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Determining witness credibility is the exclusive province of the trier of fact. (*Ibid.*) Even when there is a significant amount of inconsistent evidence, the testimony of a single witness is sufficient to support a conviction. (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) Nothing in the record suggests Lopez's testimony concerning the stolen items was inherently improbable or physically impossible. (See *People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372.)

As for Griffith's claim the jury improperly found he pistol-whipped Lopez, no such finding was made. The jury found Griffith not guilty of the aggravated assault

charge and found not true the allegation he had personally used a firearm when committing the robbery and burglary. The jury did find a principal other than Griffith, that is, Haliburton, was armed with a firearm in the commission of the crimes. That finding was not challenged by Griffith and is amply supported by the evidence.

We have examined the entire record and are satisfied Griffith's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly*, *supra*, 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

### **DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.